

SERVED: July 28, 1995

NTSB Order No. EA-4382

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 18th day of July, 1995

_____)	
DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-13774
v.)	
)	
RUBEN G. PIMENTAL,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent, pro se, has appealed from an order of Administrative Law Judge Patrick G. Geraghty, served on December 21, 1994, granting the Administrator's Motion for Summary Judgment, thus affirming the revocation of respondent's airman certificates, including his Airline Transport Pilot (ATP) certificate.¹ As discussed below, we deny the appeal, in part.

¹Copies of the law judge's Decisional Order and Order on Reconsideration are attached.

On August 10, 1994, the Administrator issued an order (complaint) revoking respondent's ATP certificate based on respondent's conviction in the United States District Court for the Southern District of Florida for possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841(a)(1). The Administrator alleged that revocation was warranted because the crime was a felony involving both a controlled substance and an aircraft. He further averred that respondent's conviction evidenced violations of section 61.15(a) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 61) and section 609(c) of the Federal Aviation Act of 1958 (the Act).² On appeal, respondent

²FAR section 61.15(a) provides as follows:

§ 61.15 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for--

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of final conviction; or

(2) Suspension or revocation of any certificate or rating issued under this part.

Section 609(c) of the Federal Aviation Act (49 App. U.S.C. 1429(c)) [now recodified as 49 U.S.C. 44710(b)] provides, in pertinent part:

(c)(1) The Administrator shall issue an order revoking the airman certificates of any person upon conviction of such person of a crime punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance), if the Administrator determines that (A) an aircraft was used in the commission of the offense or to facilitate the commission of the offense, and (B) such person served as an

argues that summary judgment was improperly granted and asks in effect that the case be remanded to the law judge for the purpose of showing the invalidity of the conviction on which the Administrator's case is based.³ In challenging the grant of summary judgment, he maintains that his statement attached to his reply to the Administrator's motion provided enough information to put material facts in dispute.⁴ He also claims that he did not operate an aircraft for the "profiteering of the narcotics trade." (Respondent's brief at 1.)

After careful review of the record, we find that the facts support a section 61.15(a) violation. Following an airman's conviction of a drug offense, the Administrator may suspend or revoke the airman's certificate under section 61.15(a), whether

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airman, or was on board such aircraft, in connection with the commission of the offense or the facilitation of the commission of the offense. The Administrator shall have no authority under this paragraph to review the issue of whether an airman violated a State or Federal law relating to a controlled substance.

³Respondent also requests a completion of discovery to support his contention that the conviction is invalid. We need not reach this issue, however, as this is not the appropriate forum for a challenge of his conviction. See Administrator v. Gilliland, NTSB Order No. EA-4149 at 4, n. 7 (1994) (Respondent could not contest facts established in prior criminal case, as the Board will not entertain collateral attacks on a criminal conviction). All the facts necessary to support the revocation under FAR section 61.15(a) have been established by the pleadings.

⁴He declared, among other things, that his guilty plea was coerced, that he was not involved in the alleged drug transaction, and that he was working as a pilot for the Drug Enforcement Agency.

or not the offense was related to the operation of an aircraft.⁵

See Administrator v. Correa, NTSB Order No. EA-3815 at 3-4 (1993), aff'd, 17 F.3d 1438 (1994).⁶ Precedent supports revocation, as such a conviction evidences an airman's lack of the necessary care, judgment, and responsibility required of a certificate holder.⁷

In the instant case, respondent was involved in a plan to purchase a large amount of cocaine, evidently for distribution.⁸

⁵Respondent does not challenge the Administrator's choice of sanction; however, as noted, supra note 4, he claims that he was "coerced" into a guilty plea. That he was convicted of an offense related to the sale of illegal drugs is sufficient evidence to support a violation of FAR section 61.15(a). The voluntariness of his plea is not a matter for the Board to decide, for that claim, too, represents a collateral attack on the conviction. See supra note 3.

⁶As we stated in Correa, the Administrator derives his authority to suspend or revoke airman certificates in the interest of air safety from Section 609(a) of the Act.

⁷In Administrator v. Piro, NTSB Order No. EA-4049 (1993), we noted:

The Board has repeatedly expressed the view that revocation should be upheld on charges under section 61.15 without regard to aircraft involvement if the drug offense underlying the charge is serious enough to draw in question the airman's qualification to hold a certificate; that is, did it demonstrate a lack of the necessary care, judgment, and responsibility a certificate holder must possess.

Id. at 3. See also Administrator v. Serra, NTSB Order No. EA-3938 (1993) (respondent's conviction for conspiracy to import methaqualone was sufficient to show he lacked the care, judgment, and responsibility required of the holder of a pilot certificate; whether or not aircraft use was shown, revocation under section 61.15(a) was warranted).

⁸The incident which led to the charge was an attempt by respondent and two associates to trade two airplanes (a Convair and a C46) for 50 kilograms of cocaine. While respondent now asserts that he was not involved in the transaction, he admitted

His involvement in drug transactions for economic gain calls into question his qualifications to hold an ATP certificate, as well as any other airman certificate. See Administrator v. Robbins, NTSB Order No. EA-4156 at 6-7 (1994) (quoting Administrator v. Piro, at 4) ("'An individual who knowingly participates in a criminal drug enterprise for economic gain thereby demonstrates such a disregard for the rights and lives of others that he may reasonably be viewed as lacking the capacity to conform his conduct to the obligations created by rules designed to ensure and promote aviation safety'").

Regarding the question of whether the Administrator established a violation of section 609(c)(1) of the Act, we note that, while respondent pleaded guilty to one count of possession with intent to distribute cocaine and was sentenced to 60 months of incarceration,⁹ the Administrator did not allege, nor do the facts in the record show, that respondent either served as an airman or was on board an aircraft in the commission of the

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his involvement when he pleaded guilty in the United States District Court for the Southern District of Florida on December 16, 1991. Before pleading guilty, he was told by the judge that, after the government attorney recited the facts, respondent would be asked if he agreed with those facts. (Attachment 2 to Administrator's Motion to Dismiss at 12.) The prosecutor mentioned several times that respondent and two other defendants were involved in an agreement to transfer aircraft for cocaine. The judge then asked if respondent heard and agreed with the recited facts. Respondent replied yes. (Id. at 14-15.) He was asked several more times if he understood the consequences of his plea, and he responded, "Your Honor, I am guilty, and I want to cooperate with the government." (Id. at 16-17.)

⁹Respondent had been charged with one count of conspiring to possess cocaine with intent to distribute, and one count of possession with intent to distribute.

offense,¹⁰ an apparent requirement of section 609(c)(1).¹¹

While we recognize that the Board is generally bound by the FAA's validly adopted interpretations of laws which it administers, such interpretations would need to be in accordance with the plain language of the statute,¹² arguably not the case here. The facts as they appear in the record do not show that respondent served as an airman, or was on board an aircraft, in connection with the commission of the drug-related offense. Hence, the manner in which the requirements of the statute are thought to be fulfilled is not obvious.¹³ Nevertheless, though we cannot affirm the 609(c)(1) charge on the record before us, respondent's violation of FAR section 61.15(a) supports the revocation of his airman certificate.

¹⁰The Administrator stated that the "crime is a felony; a violation of a statute or federal statute relating to a controlled substance and involved the use of an aircraft. Further, Respondent admitted to attempting to barter two aircraft to secure 50 kilos of cocaine." (Administrator's Motion for Judgment on the Pleadings at 2, and Administrator's Reply Brief at 2.) Apparently, the Administrator is asserting that respondent's attempt to barter two aircraft for drugs is sufficient to satisfy the criteria set forth in section 609(c)(1).

¹¹See Administrator v. Meyer, NTSB Order No. EA-4270 at 4-5 (1994) (the statute is unambiguous "that those convicted of certain carefully-defined crimes may not hold an airman certificate"); Administrator v. Hampton, NTSB Order No. EA-4251 at 4 (1994).

¹²Section 609(a) of the Act.

¹³The importance of establishing all the elements of the charge is underscored by the fact that revocation under section 609(c) is permanent. See section 602(b)(2) of the Act.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied in part and granted in part;
2. The initial decision and the Administrator's order of revocation are affirmed with respect to the charge under FAR section 61.15(a);¹⁴ and
3. The violation of section 609(c)(1) of the Act is dismissed.

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIDT, Member of the Board, concurred in the above opinion and order.

¹⁴For purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR section 61.19(f).